

1 A No, I'm not really in the business of selling
2 stations. This is the bread and butter of business to my
3 point of view. I acquire the stations. It gives me the
4 ability to make money. If I didn't have the stations, I'd
5 make less money or have to take my customers to somebody
6 else and, again, make less money.

7 Q Did there come a time when Mr. Kay approached you
8 about the possibility of selling all of your 800 MHz
9 stations subject to the management agreement?

10 A Yes.

11 Q Please describe that circumstance?

12 A Some day, I don't remember the time, but he called
13 me and asked me to come down and talk about it. He had
14 received an offer from another party to buy all of my
15 stations. This was a party that he had done business with
16 before and myself, too, and basically they had offered \$1.5
17 million for mine, for all my licenses.

18 Q And, what transpired in that conversation between
19 you and Mr. Kay then?

20 A Well, I know Jim needed funds because of the
21 litigation costs, so I'm sure he would have been happy to
22 have gotten a percentage or that, undefined percentage of
23 that. But, basically, I really didn't want to sell the
24 stations for several reasons.

25 One, I thought that they might gain more value,

1 given the climate of the radio industry changing. And, two
2 was that I really wanted to keep the stations to continue
3 the income strength generated by providing repeater service.
4 This is a long-time effort, something that would clearly
5 help me in my older days and retirement, to have returning
6 revenue without having to do a lot of work.

7 Q So, you --

8 A I turned down the offer, yes.

9 Q What was Mr. Kay's reaction to that?

10 A He was okay with it. He understood. He was also
11 in the same, he expressed the same opinion that he really
12 didn't want to sell the stations either. It would have
13 caused a lot of problems with channel capacity and we both
14 had the idea of growing the businesses, not shrinking them.

15 Q Mr. Sobel, prior to the formal start of the
16 proceeding, official reissue of the hearing designation, did
17 you become aware of a draft of a --

18 MR. SCHAUBLE: Objection, relevance, Your Honor.

19 CHIEF JUDGE CHACHKIN: Well, let's hear where he's
20 going.

21 MR. KELLER: Where I'm going is this, Your Honor.
22 I'd like to have Marc -- what exhibit are we up to?

23 MR. SHAINIS: Number five.

24 (Pause.)

25 CHIEF JUDGE CHACHKIN: All right, the designation

1 order in this case, will be marked for identification as
2 Exhibit 5.

3 (The document referred to was
4 marked for identification as
5 Kay Exhibit 5.)

6 MR. KELLER: Why don't we establish this in
7 questioning the witness, Your Honor, that this is not a
8 factual --

9 CHIEF JUDGE CHACHKIN: It isn't?

10 MR. KELLER: No, this is a draft of the
11 designation order.

12 CHIEF JUDGE CHACHKIN: Oh, a draft.

13 MR. KELLER: You will see noted at the top, for
14 identification purposes, it's dated draft 9/15/94.

15 CHIEF JUDGE CHACHKIN: All right. The document
16 will be identified as a draft of the designation order.

17 BY MR. KELLER:

18 Q Mr. Sobel, would you review that document, please,
19 and you don't have to read it, but I ask you, are you
20 familiar with this document?

21 A Yes.

22 Q Is this an accurate copy of the document to which
23 you just referred?

24 A Yes.

25 Q First of all, how did you become aware of this

1 document?

2 A Mr. Kay called me and said he had obtained this
3 document.

4 Q Did he say how he obtained it?

5 A Through FOIA.

6 Q FOIA being F-O-I-A, the Freedom of Information
7 Act?

8 A Correct.

9 Q Please turn to the second page of the document,
10 paragraph four? And, it states there, "Information
11 available to the Commission also includes that James A. Kay,
12 Jr. has done business under a number of assumed names. We
13 believe that these names include some or all of the
14 following." The first name that's listed is Air Wave
15 Communications. Is that the name under which you do
16 business?

17 A That's correct.

18 Q And, if you notice on down, they continue a litany
19 of names and several lines down, maybe two-thirds of the way
20 down, the paragraph on the left, the name also comes up,
21 Marc Sobel, d/b/a Air Wave Communications. Is that also,
22 that's obviously you, correct?

23 A That's me, correct.

24 Q What was your reaction when you first read this --

25 MR. SCHAUBLE: Objection, relevance, Your Honor.

1 I would point out among other things, Mr. Sobel's state of
2 mind is not directly at issue in this proceeding. Rather,
3 in the other proceeding --

4 MR. KELLER: Well, Mr. Sobel's state of mind, I
5 don't even know that that's really -- where I'm going with
6 this, Your Honor, is to establish the reason why there was a
7 management agreement reduced to writing and entered into in
8 this case. The essence of the misrepresentation issue in
9 this case is that Mr. Kay executed a declaration in which he
10 denied that he had any interest in Mr. Sobel's stations.

11 The Bureau's contention is that a management
12 agreement between Mr. Kay and Mr. Sobel somehow constitutes
13 an interest and that, therefore, that should have been
14 disclosed or was somehow inconsistent with the declaration.
15 In that line of reasoning, I think the reasons why Mr. Sobel
16 and Mr. Kay entered into that agreement and the background
17 in their entering into that agreement is irrelevant, at
18 least the background, if not directly relevant to the
19 misrepresentation issue.

20 CHIEF JUDGE CHACHKIN: The objection is overruled.

21 BY MR. KELLER:

22 Q What was your reaction when you first read this
23 language?

24 A Well, first of all, I was surprised, because, as
25 you can see, I'm a real person. I'm not an alias of James

1 Kay, clearly. My business is my business. Air Wave
2 Communications, he has nothing to do with it. He's not a
3 partner, he's not part of the d/b/a and it was just an
4 absolute surprise and a little bit of anger that they should
5 include my name in their process of the HDO against James
6 Kay. In other words, I thought it was entirely unfair and
7 inappropriate.

8 MR. KELLER: I would now like to have marked
9 Exhibit --

10 MR. SHAINIS: Six.

11 CHIEF JUDGE CHACHKIN: Can you describe the
12 document you've just passed around.

13 MR. KELLER: Mr. Sobel --

14 CHIEF JUDGE CHACHKIN: What is this document?

15 MR. KELLER: This document, by the way, for
16 identification purposes, is a letter on Air Wave
17 Communications letterhead, addressed to Gary Stanford of the
18 Federal Communications Commission in Gettysburg, dated
19 12/6/94. It's a two-page document that purports to be
20 signed by Marc Sobel.

21 CHIEF JUDGE CHACHKIN: All right, that document
22 will be marked for identification as Kay Exhibit 6.

23 (The document referred to was
24 marked for identification as
25 Kay Exhibit 6.)

1 MR. SCHAUBLE: Your Honor, I would also point out
2 for the record that this particular document was also an
3 exhibit in the Sobel proceeding. I believe it was WTB
4 Exhibit 46.

5 MR. KELLER: I believe that at no point was
6 included within in your exhibits in this proceeding?

7 MR. SCHAUBLE: Correct.

8 MR. KELLER: Which is the reason I made it here.

9 MR. SCHAUBLE: Okay.

10 MR. KELLER: Your Honor, I want to go ahead and
11 take care of a housekeeping matter. Can I move the
12 admission of Kay Exhibits 4 and 5?

13 CHIEF JUDGE CHACHKIN: Any objection to four?

14 MR. SCHAUBLE: Your Honor, four was the --

15 MR. KELLER: Federal licensing.

16 MR. SCHAUBLE: Object on the basis of relevance
17 for the reasons previously stated.

18 CHIEF JUDGE CHACHKIN: Well, I haven't heard your
19 objection of why it's not relevant?

20 MR. KNOWLES-KELLETT: Your Honor, it has to do
21 with the company that has nothing to do with this case.

22 CHIEF JUDGE CHACHKIN: But, it does show that
23 services are available. That licensees don't prepare their
24 own applications, that they can use different services,
25 doesn't it? One of your contentions is that Mr. Kay

1 prepared Mr. Sobel's application and that's one of the
2 contentions, that that constitutes an element of control,
3 isn't that right?

4 MR. KNOWLES-KELLETT: I think the testimony was
5 that this company somehow prepared the initial application
6 for this document. It just shows that they do with all
7 applications.

8 CHIEF JUDGE CHACHKIN: Well, this witness has
9 testified and you can cross-examine him.

10 MR. KNOWLES-KELLETT: The applications are not at
11 issue.

12 CHIEF JUDGE CHACHKIN: I understand that, but the
13 witness has testified that they also do official
14 applications and you can cross-examine.

15 MR. KNOWLES-KELLETT: But, the document is not.

16 CHIEF JUDGE CHACHKIN: Well, I'll overrule the
17 objection. You can cross-examine the witness and that
18 exhibit is received, Kay Exhibit 4 is received.

19 (The document referred to,
20 having been previously marked
21 for identification as Kay
22 Exhibit 4, was received in
23 evidence.)

24 MR. KELLER: Then, Kay Exhibit 5, Your Honor.

25 CHIEF JUDGE CHACHKIN: All right, do you object to

1 Kay Exhibit 5?

2 MR. SCHAUBLE: Your Honor, we have no objection
3 except the basis stated by counsel.

4 CHIEF JUDGE CHACHKIN: Kay Exhibit 5 is received.
5 I assume Kay Exhibit 6, which you introduced in the other
6 hearing, you have no objection to that?

7 (The document referred to,
8 having been previously marked
9 for identification as Kay
10 Exhibit 5, was received in
11 evidence.)

12 MR. SCHAUBLE: We have no objection to that, Your
13 Honor.

14 CHIEF JUDGE CHACHKIN: Are you offering Kay
15 Exhibit 6?

16 MR. KELLER: Sure, Your Honor.

17 CHIEF JUDGE CHACHKIN: Kay Exhibit 6 is received.
18 (The document referred to,
19 having been previously marked
20 for identification as Kay
21 Exhibit 6, was received in
22 evidence.)

23 MR. KELLER: I'll ask him some questions about it.

24 BY MR. KELLER:

25 Q Mr. Sobel, please refer to Kay Exhibit 6, which is

1 the letter to Mr. Stanford. Are you familiar with this
2 document?

3 A Yes, I wrote it.

4 Q Is that your signature at the end?

5 A Yes.

6 Q The date of the document states 12/6/94. Is that
7 December 6, 1994?

8 A Yes.

9 Q Is that when, on or about that date, you sent this
10 letter to the FCC?

11 A Yeah, it was shortly after I received the
12 information regarding my name being included in the case,
13 the proposed HDO order.

14 Q What was the purpose of this particular letter?

15 A Well, after seeing that they clearly thought I was
16 an alias, a ghost or didn't exist at all, I thought it be
17 appropriate to point out the fact that I am real and I wrote
18 this letter to Mr. Stanford. I think I did a reasonable job
19 in detailing the situations where the Commission is holding
20 up my licenses, applications that I had made, prepared for
21 another company. And to clarify who I was in here, I make a
22 statement that I'm an independent two-way radio dealer. I
23 do business with Mr. Kay. I included, not with this
24 document here, but with my original, I included copies of my
25 tax registration permits, Yellow Pages and other information

1 to show that I'm a real entity.

2 Basically, I wanted them to acknowledge and see
3 that I'm a separate person, rather than allowing this other
4 mistake to continue.

5 Q Would you read the last sentence of the letter out
6 loud, please?

7 A I would --

8 MR. SCHAUBLE: Objection, Your Honor, it's in
9 evidence.

10 CHIEF JUDGE CHACHKIN: All right, sustained. The
11 document speaks for itself.

12 BY MR. KELLER:

13 Q Is it true that in this document, you invited Mr.
14 Stanford to contact you if he required any additional
15 information?

16 MR. SCHAUBLE: Objection, the document speaks for
17 itself.

18 BY MR. KELLER:

19 Q All right, I will state that the document speaks
20 for itself. Did Mr. Stanford ever contact you in response
21 to this letter?

22 A No, I never heard from anybody.

23 Q All right, that was going to be my next question.
24 Did anybody from the FCC ever contact you?

25 A No.

1 Q It's true, is it not, that during 1994, you
2 noticed that a lot of the processing on your various
3 applications had frozen up, so to speak?

4 A That's correct. In fact, it's detailed in this
5 letter.

6 Q And, is it also true that you were somewhat
7 confused of that prior to receiving, becoming aware of this
8 language in the draft designation?

9 A That's correct.

10 Q Now, after you received Kay Exhibit 5 or after you
11 became aware of it, after you became aware of that language
12 in paragraph four, what, if anything, did you do?

13 A I spoke to Mr. Kay about it and I spoke to my
14 attorney at the time, Brown and Schwaninger, about it.

15 Q Was any course of action agreed upon at that time,
16 as to what might --

17 MR. EISEN: Your Honor, since the witness
18 indicated he spoke with an attorney, may have a moment to
19 talk to the witness about the matter of privilege?

20 CHIEF JUDGE CHACHKIN: Well, I don't think it's
21 necessary, because now he's saying what was the end result
22 of that, and I assume that's going to be the preparation of
23 the agreement.

24 MR. EISEN: I think my request is enough to simply
25 remind the witness that he is wandering into an area that

1 may involve some privilege and he should tread carefully.

2 Thank you, Your Honor.

3 MR. KELLER: Yes, let me do it this way, Mr.
4 Sobel.

5 BY MR. KELLER:

6 Q Regardless of how I may pose my questions, I do
7 not want you to respond with any communications you may have
8 given to your attorneys or that they may have communicated
9 back to you. So, let me rephrase the question.

10 Did you decide to take any specific course of
11 action as a result of becoming aware of that language in the
12 draft HDO?

13 A I asked the attorneys to draw up an agreement
14 between Mr. Kay and I to clarify our separateness, our
15 positions as two businesses, and our relationship in my
16 stations that he managed.

17 CHIEF JUDGE CHACHKIN: Before we go on, I just
18 want to make clear, as far as the attorney-client privilege,
19 it's his privilege if he wants to release and add, and I'll
20 permit you if it comes up again to ask the witness if he
21 wants to do that.

22 MR. EISEN: Thank you, Your Honor. I would simply
23 remind him that this area he's treading is one in which he
24 should be careful.

25 CHIEF JUDGE CHACHKIN: All right, but we're not

1 going to tread in that area, apparently, so fine.

2 BY MR. KELLER:

3 Q Mr. Sobel, please turn in the --

4 CHIEF JUDGE CHACHKIN: But, is it correct that
5 your counsel prepared this agreement? You didn't personally
6 prepare it?

7 MR. KELLER: Yes, I'm about to enter into some
8 questions about that agreement, Your Honor.

9 CHIEF JUDGE CHACHKIN: All right.

10 MR. KELLER: I believe this may be in the next
11 volume. There's some differences in where the volumes
12 break. WTB Exhibit 339, please, if you could locate that
13 and get it in front of you?

14 THE WITNESS: Excuse me, where do you want me to
15 look?

16 MR. KELLER: Exhibit 339, WTB Exhibit 339.

17 MR. SCHAUBLE: Your Honor, may I approach the
18 witness and help --

19 CHIEF JUDGE CHACHKIN: I think the witness has got
20 it.

21 (Pause.)

22 BY MR. KELLER:

23 Q Do you recognize Exhibit 339?

24 A Yes.

25 Q Is this, in fact, the agreement that was prepared

1 for you by your attorneys?

2 A Yes, Brown and Schwaninger prepared this
3 agreement.

4 Q What is the date on the agreement that's executed?

5 A The 28th day of October, 1994.

6 Q Do you recall, did you receive preliminary drafts
7 of this agreement to which you're commenting?

8 A No.

9 Q How did it come about?

10 A My understanding, this is a common agreement that
11 attorneys have prepared or, I should say, boilerplate, and
12 they just plugged in the particulars.

13 Q This is October of 1994. At that point, how long
14 had you been operating under this oral understanding with
15 Mr. Kay?

16 A Since 1990, when I first put in my first computer
17 on 800 MHz.

18 Q In that time, were you in any way dissatisfied
19 with Mr. Kay's performance under the oral arrangement?

20 A Not at all.

21 Q Did you have any reason to mistrust Mr. Kay?

22 A No.

23 Q Did you have any reason to feel that you wanted to
24 modify or change the relationship that you had with Mr. Kay?

25 A Not at all.

1 Q What was the purpose of your requesting a written
2 agreement?

3 A Well, first of all, the HDO clearly involved me in
4 his proceeding. The proposed HDO. I was very fearful that
5 I would get sucked into this process.

6 I felt that it was necessary to clarify on paper
7 our positions.

8 Q After this agreement was executed, did you and Mr.
9 Kay change the way you operated under the oral agreement?

10 A Nothing changed at all.

11 Q Now, did there come a time when you learned that a
12 formal HDO in Mr. Kay's proceeding had actually been
13 adopted?

14 A Yes.

15 MR. KELLER: I'm not going to offer this into
16 evidence. I just want to show the witness a copy of the
17 actual designation orders. I don't want to introduce them
18 into evidence.

19 CHIEF JUDGE CHACHKIN: All right, go ahead.

20 BY MR. KELLER:

21 Q Take a moment and just look through that document,
22 please? My first question, Mr. Sobel, if you've finished
23 examining it, looking at the first page of the HDO, did it
24 indicate the date that it was issued by the Commission,
25 released?

1 A The release date says December 13, 1994.

2 Q Is that 13 or 31?

3 A December 13, 1994.

4 Q I thought it was 31?

5 CHIEF JUDGE CHACHKIN: No, it's the 13th according
6 to my records.

7 MR. KELLER: Oh, I'm sorry, I'm confused. I've
8 just been corrected, thank you.

9 BY MR. KELLER:

10 Q Mr. Sobel, turn to paragraph four of the HDO and
11 review that language. And, compare it, if you would, to
12 paragraph four in the draft HDO that you received.

13 MR. SCHAUBLE: Just an inquiry, does counsel mean
14 paragraph four or paragraph three? I think counsel may be
15 referring to paragraph three.

16 BY MR. KELLER:

17 Q Yes, paragraph three of the HDO, would you please
18 compare that to paragraph four of the draft HDO?

19 A Go ahead.

20 Q How do those two compare?

21 A They appear to be identical.

22 Q Do they both still mention Air Wave Communications
23 and Marc Sobel d/b/a Air Wave Communications?

24 A Yes, they do.

25 Q Does the official HDO still identify Air Wave

1 Communications and Marc D. Sobel d/b/a Air Wave
2 Communications as assumed names under which they believe Mr.
3 Kay is doing business?

4 A Yes.

5 Q When you became aware of and learned of the
6 official HDO, did you notice any other differences between
7 it and the draft HDO?

8 A The issued HDO also included an appendix with
9 licenses of Mr. Kay and some of my licenses.

10 Q So, it actually specified your license in it?

11 A That's right. It appeared that they were going to
12 take my licenses away in Mr. Kay's hearing, which didn't
13 make any sense at all to me.

14 Q With the same admonitions as before regarding
15 privilege, what, if anything, did you do at that point?

16 A Well, again, I talked to Mr. Kay and my attorneys,
17 Brown and Schwaninger, regarding this and just talked to
18 them about what to do about it.

19 Q Was any course of action that you recall decided
20 upon on how to deal with it?

21 A Not at that moment. It was clear that the
22 Commission could not take my licenses away on his hearing.
23 It was clearly a screw up on their case. I had already
24 written to the Bureau in a letter to Gary Stanford, and I
25 don't know why they had continued to leave my name in their

1 hearing against Mr. Kay. It was certainly a mess.

2 MR. KELLER: Excuse me one moment, Your Honor.

3 Can we go off the record for just one moment, please?

4 CHIEF JUDGE CHACHKIN: All right.

5 (Discussion held off the record.)

6 CHIEF JUDGE CHACHKIN: Back on the record.

7 Exhibit 41 from the Sobel case?

8 MR. SCHAUBLE: Exhibit 41 from the Sobel
9 proceeding was Mr. Sobel's January 11, 1995 affidavit.

10 That's not a separate exhibit in this proceeding, but it is
11 part of WTB Exhibit 342, which is the motion. That's the
12 one that was rejected.

13 Similarly, WTB Exhibit 43 in the Sobel proceeding,
14 which is Mr. Sobel's January 24, 1995 affidavit is not a
15 separate exhibit in this proceeding, but it's part of WTB
16 Exhibit 343, which is in evidence in this proceeding.

17 MR. KELLER: All right, thank you for that
18 clarification.

19 MR. KNOWLES-KELLETT: We might note for the
20 record, Your Honor, that the two affidavits were identical
21 except for the date, and so if there's any confusion with
22 respect to the Sobel transcript, referring to Exhibit 41,
23 Exhibit 43 works just as well.

24 MR. KELLER: And, that's fine. In fact, I'm
25 willing to accept that we can take all of this as referring

1 to, in fact, page 22 of Exhibit 343. That is, any
2 references in the Sobel transcript that's been introduced or
3 admitted in this proceeding to Exhibit 41 or Exhibit 43 is
4 actually a reference to page 22, for all relevant purposes,
5 is a reference to page 22 of WTB Exhibit 343 in this
6 proceeding.

7 MR. KNOWLES-KELLETT: Except for the portion of
8 the transcript that discusses why there were dates --

9 MR. KELLER: Why there were dates -- but, since
10 that one has been excluded, we don't even need to get into
11 that.

12 MR. KNOWLES-KELLETT: All right, that's
13 acceptable, Your Honor. Fine.

14 MR. KELLER: With that now, since I'm so bad with
15 numbers, 343 is the one that is admitted?

16 MR. SCHAUBLE: Correct.

17 BY MR. KELLER:

18 Q Okay, Mr. Sobel, please find and locate Exhibit
19 343, please? I'll ask you, having done so, to turn to page
20 22 of Exhibit 343.

21 A Page 22 is not in this book. There's a little
22 piece of paper with a list of call signs on it.

23 (Pause.)

24 Q 343?

25 (Pause.)

1 MR. KELLER: All right, forget those call signs.

2 I don't know where these came from.

3 (Pause.)

4 CHIEF JUDGE CHACHKIN: All right, the witness has
5 the page.

6 (Pause.)

7 BY MR. KELLER:

8 Q Mr. Sobel, now you've now located page 22 of WTB
9 Exhibit 343?

10 A Yes.

11 Q You are familiar with this document?

12 A Yes.

13 Q That is your signature on this document?

14 A Yes.

15 Q Can you explain to me the circumstances under
16 which you came to sign this document?

17 A Well, since the Commission included my name in the
18 HDO against Mr. Kay, it was clear that they made a mistake.
19 Even though I attempted to clarify my existence with them,
20 my attorneys, Brown and Schwaninger, had prepared this
21 document for Mr. Kay to be submitted, and then part of this
22 document was I placed my affidavit, again clarifying the
23 position that I had no interests, or Kay had no interests in
24 my license.

25 Q Now, did you edit the document in any way or did

1 you sign it as prepared by the attorneys?

2 A I signed it as it was prepared.

3 Q But, you did review it first?

4 A Of course.

5 Q Did you find it to be factually accurate?

6 A Yes.

7 Q Now, you notice that this document is here,
8 Exhibit 343 is an attachment to a much larger document, a
9 17-page document with a couple of exhibits, and the title of
10 the first page, page Y, is Motion to Enlarge, Change or
11 Delete Issues.

12 Did you review this particular document at the
13 time that you signed the affidavit?

14 A No.

15 Q Were you familiar with the various contents of
16 this document at the time you signed the affidavit?

17 A Not truly familiar with it.

18 Q Did you understand that this document included or
19 were you told that this document included a lot of other
20 procedural matters involving Mr. Kay's proceeding beyond
21 this particular affidavit?

22 A Yes.

23 Q I want you now to go back to, and this time you're
24 going to have to, I think, switch to WTB Exhibit 329. We're
25 getting back to transcripts of your hearing. I believe this

1 is in 329. Let me just double check. Yes, page 303 of the
2 transcript.

3 Before I ask you about page 303, Mr. Sobel, after
4 you signed this affidavit, what did you do with it?

5 A I gave it to Mr. Kay.

6 Q What was your understanding that he was going to
7 do with it?

8 A It would be submitted to the Commission and filed
9 with the Commission, along with the management agreement.

10 Q Were you there after -- and I'm not talking about
11 later in preparation for your hearing in this proceeding --
12 back at that time, were you ever later provided with a copy
13 of the Motion to Enlarge that was filed at that time?

14 A No, I don't think I ever got one.

15 Q Now, at page 303, you make a statement in response
16 to a question here, I'm talking page 303 of the transcript,
17 and again, for purposes of the record, we're at Exhibit 329,
18 line five. You say, "Mr. Kay filed it, along with his
19 Motion to Enlarge. It went to the Judge."

20 Now, you later, when you said it there, you were
21 referring to a copy of the written management agreement,
22 correct?

23 A Yes.

24 Q You've since come to find out that that's not
25 true, correct?

1 A That's correct.

2 Q Did you believe it was true at the time you made
3 this statement?

4 A Yes.

5 Q What was the basis for that belief?

6 A Well, the whole purpose of the management
7 agreement was to show our individual companies, the
8 relationship, and define how the stations were managed. The
9 whole idea of writing the management agreement was to define
10 it, and this was filed at the time to present it to the
11 Commission.

12 Q Did anyone, either your attorneys or Mr. Kay, ever
13 specifically tell you that the management agreement was
14 going to be filed as part of this motion?

15 A I assumed it was.

16 Q But, did they tell you it was?

17 A That I don't recall.

18 Q But, you assumed that it was?

19 A That's correct.

20 Q Mr. Sobel, I now want you to go back to page 22 of
21 WTB Exhibit 343. Having said all that, for the record, I'm
22 referring now to the affidavit. Mr. Sobel, have you had an
23 opportunity now to reread this affidavit?

24 A Yes.

25 Q You make the statement in here, "Mr. Kay has no

1 interest in any radio station or license for which I am the
2 licensee." Can you state for me what you mean, what you
3 meant at that time by the word interest?

4 MR. SCHAUBLE: Objection, irrelevant as to Mr.
5 Sobel's state of mind to the issues in this proceeding.

6 CHIEF JUDGE CHACHKIN: Overruled.

7 THE WITNESS: The Commission was clearly
8 attempting to cancel my licenses in the HDO. They were
9 attempting to cancel my licenses.

10 The Commission, the word interest is related to
11 the licenses. Mr. Kay is not a partner of mine. His name
12 does not appear on my licenses. He's not a part of my
13 business, and he has no interest in my licenses.

14 This affidavit was related to my licenses and the
15 Commission's efforts to cancel them.

16 BY MR. KELLER:

17 Q Now, the exact statement says no interest in any
18 radio station or license. Now, I understand you just
19 testified that you did not draft this document, but in your
20 mind, is there a distinction in that usage between the
21 station and a license?

22 A Not in this way. The station license are kind of
23 one and the same. On my license, it says ~~regular~~ ^{radio} station
24 license.

25 Q It says that at the top of the license, doesn't

1 it?

2 A Yeah, in big letters.

3 (Pause.)

4 MR. KELLER: If I could have just a few moments,
5 Your Honor, like a two-minute break?

6 CHIEF JUDGE CHACHKIN: All right, go off the
7 record.

8 (Discussion held off the record.)

9 CHIEF JUDGE CHACHKIN: Back on the record.

10 BY MR. KELLER:

11 Q Mr. Sobel, I need you, if you would, to locate in
12 your binders WTB Exhibits 340 and 341. Now, what is WTB
13 Exhibit 340? What do you recognize it as being?

14 A This is a management agreement that my attorneys
15 drew up, between James Kay and myself.

16 Q I notice that unlike the agreement we discussed
17 just a moment ago, this was dated December 30, 1994. The
18 earlier one was signed October of '94. What's the reason
19 for that?

20 A It was to add a couple of licenses to the list and
21 enable Mr. Kay to pay me \$100 option.

22 Q Now, flipping over to WTB Exhibit 341, is this the
23 document which affects the addition of the licenses that
24 you're referring to?

25 A That's correct.

1 Q Well, Mr. Sobel, I want you to focus your
2 attention on, first of all, on page one of Exhibit 340, the
3 first recital paragraph, the first "Whereas..." paragraph,
4 which lists out the various call signs. And, then, I also
5 want you to focus your attention on the call signs that are
6 listed in WTB Exhibit 341. I'm going to approach the
7 witness again with your permission, Your Honor.

8 CHIEF JUDGE CHACHKIN: All right.

9 MR. KELLER: I'm handing you now, from a moment
10 ago, this copy is the HDO from this proceeding. I'm going
11 to refer the witness to what I believe is Appendix A to the
12 HDO. This is the official HDO in this proceeding. Appendix
13 A is a list, an enumerated list of stations and numbers 154
14 through 164 on that list are listed under the heading, "The
15 following call signs are held in the name of Marc Sobel." I
16 want to place that list before you.

17 Now, take your time if you need to, to do this.

18 BY MR. KELLER:

19 Q What I want to ask you, Mr. Sobel, is, is it not
20 true that of these call signs that were listed in the HDO
21 Appendix, that only two, namely numbers 155 and 156, were
22 subject to the management agreement with Mr. Kay? If you
23 know, fine, but if you don't, take your time to review the
24 agreement.

25 A That's correct.

1 Q So, how many of your station licenses are listed
2 here altogether?

3 A Eleven.

4 Q Of those eleven, nine of them have nothing at all,
5 have no relationship whatsoever to the management agreement
6 with Mr. Kay, correct?

7 A That's correct. In fact, they missed a bunch of
8 my other licenses.

9 Q Mr. Sobel, you had opportunities in the past to
10 review the HDO, the HDO, the official one, correct?

11 A Yes.

12 Q You've also had opportunities to review the HDO in
13 your own proceeding, correct?

14 A Yes.

15 Q Was it ever your understanding, based on reading
16 those documents or based on anything else that was said to
17 you, that the Commission was in any way attempting to seize
18 your transmitter equipment or your repeater equipment?

19 A No, not at all.

20 Q Mr. Sobel, you stated that the written management
21 agreement that we've been discussing was prepared for you or
22 drafted by your communications counsel, correct?

23 A That's correct.

24 Q Now, the first agreement was executed in October
25 of 1994. Would they have prepared it shortly before that

1 date?

2 A Within a week or two, probably, yes.

3 Q You've also stated that your communications
4 counsel prepared the affidavit which you executed in support
5 of Mr. Kay's Motion to Enlarge, correct?

6 A That's correct.

7 Q That document, I believe, and the record will
8 reflect that it was executed in January of 1995?

9 A Correct.

10 Q Some three months, approximately, or, actually, I
11 guess, less, after execution of the management agreement?

12 A That's correct.

13 Q Were these the same communication counsel that
14 we're talking about?

15 A Yes, Brown and Schwaninger.

16 MR. KELLER: Can I have just a few moments?

17 CHIEF JUDGE CHACHKIN: Yes. Go off the record.

18 (Discussion held off the record.)

19 MR. KELLER: I'm sorry.

20 BY MR. KELLER:

21 Q Going back, Mr. Sobel, to that appendix that we
22 were referring to in the HDO and Appendix A, we were
23 referring to the list of your stations, namely Stations 153
24 through 164.

25 Now, you've already stated that stations, the ones

1 that are listed as 155 and 156 are, in fact, subject to this
2 800 MHz management agreement, correct?

3 A That's correct.

4 Q As to the other stations, as to the stations
5 listed in number 154, and as to the stations listed as 157
6 through 164, my question is, does Mr. Kay provide you with
7 repeater equipment for any of these stations?

8 A No.

9 Q Do you sublease space from Mr. Kay for any of
10 these stations?

11 A Some of the stations.

12 Q For those, do you actually pay him money on a
13 current basis for the lease?

14 A Yes.

15 Q Who loads the customers on these particular
16 stations?

17 A I do.

18 Q Who bills and collects for those particular
19 customers?

20 A I do.

21 Q Beyond the site lease and beyond just your general
22 friendship and social and professional relationship with Mr.
23 Kay, what formal relationship, if any, does he have to these
24 stations?

25 A He doesn't.

1 MR. KELLER: Your Honor, I have no further
2 questions.

3 CHIEF JUDGE CHACHKIN: All right, any redirect?

4 MR. SCHAUBLE: Your Honor, can we take just a
5 couple of minutes? I don't think we have much.

6 CHIEF JUDGE CHACHKIN: Let's go off the record.

7 (Discussion held off the record.)

8 MR. SCHAUBLE: Your Honor, initially in light of
9 the questions asked by Mr. Keller, I believe there are two
10 additional sections of transcript in the Sobel proceeding
11 which are now directly relevant to Mr. Keller's examination
12 and I would like Your Honor to move those additional
13 portions of -- these are both Exhibit 328 -- into evidence.
14 The first part is --

15 CHIEF JUDGE CHACHKIN: If you have questions,
16 counsel, you can ask the witness questions on redirect. You
17 introduced the parts of the exhibit you want him to see.
18 The witness was cross-examined. You didn't object. If you
19 have any redirect, go ahead and ask your redirect questions.
20 Unless you can reach a stipulation with counsel.

21 MR. KELLER: I agree. I think the most efficient
22 thing is just to ask him the same questions again if you
23 need to.

24 MR. SCHAUBLE: Okay.

25 //

1 REDIRECT EXAMINATION

2 BY MR. SCHAUBLE:

3 Q Mr. Sobel, at how many sites do you currently
4 lease space from Mr. Kay?

5 A I believe it's five.

6 Q At how many sites do you currently lease space to
7 Mr. Kay?

8 A One.

9 Q And, where is that site located?

10 A Hollywood Hills.

11 Q Do you recall the names of the sites at which you
12 currently lease space from Mr. Kay?

13 A Mount Lukens, Sierra Peak, Oat Mountain, Rasnow
14 Peak, Johnstone Peak.

15 Q Now, with respect to WTB Exhibit 339, which is the
16 management agreement, you testified that it was prepared by
17 Brown and Schwaninger, correct?

18 A Yes.

19 Q Now, you also testified that Brown and Schwaninger
20 also represented you at this time, correct?

21 A Yes.

22 Q Is it correct that they also represented Mr. Kay
23 at this time?

24 A Yes.

25 Q And, at this time, did you have any understanding

1 as to who would be paying your legal fees with respect to
2 the preparation of this agreement?

3 A Yes.

4 Q What was that understanding?

5 A Mr. Kay would have borne the cost of legal fees.

6 Q Okay. And, is it correct that throughout your
7 agreement with Mr. Kay, you had an understanding that you
8 would pay all of the legal fees relating to the management
9 agreement stations?

10 A Yes, in fact, that was part of our deal.

11 Q Turning to WTB Exhibit 343, which is the Motion to
12 Enlarge, Change or Delete Issues, the question, Mr. Sobel,
13 is did you ever hear concerning what the outcome of this
14 motion was, what the result of this motion was?

15 A I don't think so. I don't recall.

16 Q Do you recall when you first submitted the
17 management agreement to the Commission?

18 A Yes.

19 Q When was that?

20 A When they requested the information in 308(b).

21 Q Do you recall the date of that 308(b) letter?

22 A No.

23 Q Do you recall in what year it occurred?

24 CHIEF JUDGE CHACHKIN: If you have the date, just
25 supply it and the witness can agree.

1 MR. SCHAUBLE: Okay, one second, Your Honor.

2 CHIEF JUDGE CHACHKIN: All right.

3 BY MR. SCHAUBLE:

4 Q Mr. Sobel, I direct your attention to --

5 CHIEF JUDGE CHACHKIN: Well, why don't you suggest
6 the date?

7 BY MR. SCHAUBLE:

8 Q Mr. Sobel, does the date July 3, 1996 sound
9 correct to you?

10 A I'll trust it is.

11 MR. KELLER: I'll stipulate to that, Your Honor.

12 CHIEF JUDGE CHACHKIN: All right.

13 MR. SCHAUBLE: Your Honor, if I could have one
14 more minute?

15 (Discussion held off the record.)

16 MR. SCHAUBLE: No further questions, Your Honor.

17 MR. KELLER: Your Honor, I would like just a
18 moment to consult, please?

19 CHIEF JUDGE CHACHKIN: We'll go off the record.

20 (Discussion held off the record.)

21 CHIEF JUDGE CHACHKIN: Any further questions?

22 MR. KELLER: Yes, just a few. First, and I
23 apologize I forgot to do this earlier. This is not
24 redirect, it's rather a clarification. I have no idea if
25 this is the same thing the witness wanted, but a

1 clarification of something this morning.

2 RE-CROSS-EXAMINATION

3 BY MR. KELLER:

4 Q This morning, Mr. Sobel, you were asked by Mr.
5 Schauble, I believe, regarding the location of various
6 stations where your channels are included in an LTR trunk
7 group, and I believe my understanding is that you wish to
8 clarify some of those statements?

9 A Yes, I believe I mentioned Lukens and Santiago's
10 locations. I was in error in saying Santiago -- or, excuse
11 me, I mentioned Hollywood Hills and Santiago. I was in
12 error in saying Santiago. I meant to say Lukens and
13 Hollywood Hills and I have another site at Houser.

14 Q I don't think it's that critical, but I just
15 wanted to make sure.

16 CHIEF JUDGE CHACHKIN: Is that 91?

17 THE WITNESS: No.

18 CHIEF JUDGE CHACHKIN: Okay, thank you.

19 BY MR. KELLER:

20 Q Mr. Sobel, I just have a couple of questions for
21 you. First of all, you just testified that the first date
22 in which you submitted the management agreement to the
23 Bureau was July 3, 1996. That was the date, well, actually,
24 I stipulated to the date. That was when you testified that
25 the first time you submitted a copy to the Bureau was in

1 response to the 308(b) request.

2 Mr. Sobel, isn't it true that oral representations
3 were made to the Bureau regarding the existence of the
4 management agreement as early as 1995?

5 A That's correct.

6 Q Do you know by whom those were made?

7 A By yourself and counsel.

8 Q Isn't it true that this was done in an effort to
9 secure a meeting with the Bureau, in order to find out what
10 the problem was with the hold up on your applications?

11 MR. SCHAUBLE: Objection, Your Honor. We seem to
12 be dealing with hearsay here.

13 CHIEF JUDGE CHACHKIN: We're talking about the
14 witness. Overruled.

15 THE WITNESS: Yes.

16 BY MR. KELLER:

17 Q Did you not instruct me to advise the Bureau that
18 you would be happy to come to Washington or Gettysburg and
19 provide them with any information and answer any questions?

20 A Yes, we tried very, very hard to meet with the
21 Bureau and talk to them about it and they refused.

22 Q And, do you recall that I advised you that on at
23 least one occasion, 1995, I personally advised the Bureau
24 that there was a written management agreement and that a
25 copy of it had already been produced to them in discovery in

1 the Kay proceeding?

2 A Yes.

3 Q The only other question that I have for you, Mr.
4 Sobel, has to do with your statement that it was your
5 understanding all along with Mr. Kay that he would absorb
6 the legal costs associated with the management agreement
7 stations. For these types of land mobile stations, do you
8 typically incur very much in the way of legal costs?

9 A No, not at all.

10 MR. KELLER: No further questions.

11 CHIEF JUDGE CHACHKIN: Is there something you want
12 to clarify?

13 THE WITNESS: Yes, one thing.

14 CHIEF JUDGE CHACHKIN: Go ahead.

15 MR. KELLER: Oh, you want to clarify with me?

16 (Pause.)

17 MR. KELLER: No, Your Honor, the witness just
18 consulted with me on something that's purely a matter of
19 law, not fact. If it's an issue, I'll raise it in legal
20 arguments later.

21 CHIEF JUDGE CHACHKIN: Thank you, sir. Do you
22 have any further questions?

23 MR. SCHAUBLE: Can we go off the record for a
24 second?

25 CHIEF JUDGE CHACHKIN: Yes.

1 (Discussion held off the record.)

2 CHIEF JUDGE CHACKIN: Back on the record.

3 MR. SCHAUBLE: No further questions, Your Honor.

4 CHIEF JUDGE CHACKIN: Thank you very much, Mr.

5 Sobel. You're excused, Mr. Sobel.

6 THE WITNESS: Thank you.

7 (Witness excused.)

8 CHIEF JUDGE CHACKIN: All right, we'll be in

9 recess until 9 a.m. tomorrow morning.

10 (Whereupon, at 3:05 p.m., the hearing was
11 recessed, to reconvene at 9:00 a.m. on Tuesday, January 12,
12 1999.)

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